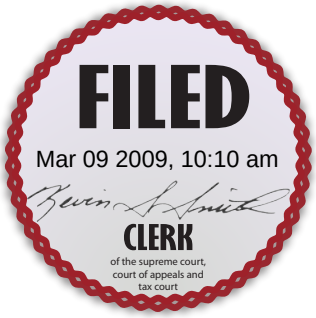

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IN THE
COURT OF APPEALS OF INDIANA

IN RE: THE TERMINATION OF THE PARENT-CHILD RELATIONSHIP OF S.M.W. and C.G.R.V.,	)	
SCOTT W.,	)	
Appellant-Respondent,	)	
vs.	)	No. 71A03-0808-JV-405
ST. JOSEPH COUNTY DEPARTMENT OF CHILD SERVICES,	)	
Appellee-Petitioner.	)	

APPEAL FROM THE ST. JOSEPH PROBATE COURT
The Honorable Peter J. Nemeth, Judge
The Honorable Barbara J. Johnston, Magistrate
Cause Nos. 71J01-0801-JT-16, 71J01-0801-JT-15

March 9, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

MAY, Judge

Scott W. ("Father") challenges the termination of his parental rights to two of his children, S.M.W. and C.G.R.V. Because the evidence supports the trial court's determination, we affirm.

FACTS AND PROCEDURAL HISTORY

In 1997, when he was 20 years old, Father pled guilty to Class C felony child molesting for acts involving his four-year-old niece. In sentencing Father, the trial court found he "attempted to shift the blame" for the molestation to his niece, he had "an utter lack of remorse for his conduct," he had two prior misdemeanor convictions, and "he has extensive psychological problems." (State's Ex. 3.) The court sentenced Father to eight years, with four years suspended to probation. Father was required to register as a sex offender.

S.M.W. was born June 29, 2004. C.G.R.V. was born May 20, 2005. On December 5, 2006, Father established paternity of both children. At the time, Father was in jail for a 2005 conviction of failing to register as a sex offender, which is a felony. The paternity court ordered Father could not visit with the children until he was released from parole and petitioned the court.

DCS detained the children on February 23, 2007, while Father was still in jail. Father had not seen S.M.W. since 2006, and he had never seen C.G.R.V. At the CHINS disposition, the court ordered Father to maintain contact with DCS and to participate in services after he was released from parole. Father sent two letters to DCS, one in April 2007 and one in May 2007. His next contact with DCS was in December 2007 when he

appeared at the DCS office after being released from prison. At that time Father was on parole, and one condition of his parole was that he have no contact with children, even his own.

DCS petitioned to terminate Father's parental rights on January 14, 2008.[1] On March 6, 2008, Father was released from parole. Because of his parole condition, Father had not visited with the children, nor had he been able to begin any services through DCS. The court heard evidence on the termination petitions on June 13, 2008. On July 18, 2008, the court terminated Father's parental rights in orders that provided:

> The allegations of the petition are true in that: the child have [sic] been removed from the parent for at least six (6) months under a dispositional decree of this Court dated April 25, 2007 . . . .
>
> There is a reasonable probability that the conditions resulting in the removal of the child from her parents' home will not be remedied.
>
> There is a reasonable probability that a continuation of the parent-child relationship will pose a threat to the well-being of the Child.
>
> It is in the best interest of the child that the parent-child relationship be terminated.
>
> The St. Joseph County Department of Child Services has a satisfactory plan for the care and treatment of the child which is Adoption.
>
> **IT IS ORDERED:**
>
> 1. The Petition for Termination is granted.
> 2. The parent-child relationship between . . . the child, and Scott [W.] (Father), the parent(s), be, and the same hereby is terminated, and all

[1] In March of 2008, the mother voluntarily consented to the termination of her parental rights to both children.

> rights, powers, privileges, immunities, duties and obligations (including the right to consent to adoption) pertaining to that relationship are hereby permanently terminated.

(Appellant's Br. at 6-7.)[2]

DISCUSSION AND DECISION

We are highly deferential when reviewing termination of parental rights. *In re K.S.*, 750 N.E.2d 832, 836 (Ind. Ct. App. 2001). We do not reweigh evidence or judge the credibility of witnesses. *In re D.D.*, 804 N.E.2d 258, 264 (Ind. Ct. App. 2004), *trans. denied sub nom. Peterson v. Marion County OFC*, 822 N.E.2d 970 (Ind. 2004). Instead, we consider only the evidence and reasonable inferences therefrom that are most favorable to the judgment. *Id.* In deference to the juvenile court's unique position to assess the evidence, we will set aside a judgment terminating a parent-child relationship only if it is clearly erroneous. *In re L.S.*, 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), *trans. denied sub nom. Swope v. Noble County Office of Family & Children*, 735 N.E.2d 226 (Ind. 2000), *cert. denied* 534 U.S. 1161 (2002).

A petition to terminate a parent-child relationship must allege:

> (A) [o]ne (1) of the following exists:
>
> (i) the child has been removed from the parent for at least six (6) months under a dispositional decree;

[2] Father's Brief contains an order terminating Father's rights to C.G.R.V. This version of the order is signed by the magistrate and the judge, but does not have the trial court's file stamp. Father's Appendix contains a different version of the alleged final order pertaining to both children, which is file stamped but does not include signatures of the magistrate and judge. (Appellant's App. at 28-29.) We ordered Father to produce signed and file stamped copies of final orders pertaining to both children. Order, Cause No. 71A03-0808-JV-405 (Ind. Ct. App. Jan. 14, 2009). Father produced those orders, which match the order provided in Father's Brief of Appellant but for the substitution of S.M.W. where appropriate in one order. For simplicity, we cite the order Father provided in his Brief.

* * * * *

(B) there is a reasonable probability that:
(i) the conditions that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied; or
(ii) the continuation of the parent-child relationship poses a threat to the well-being of the child;
(C) termination is in the best interests of the child; and,
(D) there is a satisfactory plan for the care and treatment of the child.

Ind. Code § 31-35-2-4(b)(2). The State must establish each of these allegations by clear and convincing evidence. *Egly v. Blackford County Dep't of Pub. Welfare*, 592 N.E.2d 1232, 1234 (Ind. 1992).

Father challenges the trial court's conclusions only under part (B) of that statute. When determining whether there is a reasonable probability the conditions justifying a child's removal and continued placement outside the home will not be remedied, the juvenile court must judge a parent's fitness to care for his or her children at the time of the termination hearing, taking into consideration evidence of changed conditions. *In re J.T.*, 742 N.E.2d 509, 512 (Ind. Ct. App. 2001), *trans. denied sub nom. Timm v. Office of Family & Children*, 753 N.E.2d 12 (Ind. 2001). However, the court must also "evaluate the parent's habitual patterns of conduct to determine the probability of future neglect or deprivation of the child." *Id.* Pursuant to this rule, courts have properly considered evidence of a parent's prior criminal history, drug and alcohol abuse, history of neglect, failure to provide support, and lack of adequate housing and employment. *A.F. v. Marion County Office of Family & Children*, 762 N.E.2d 1244, 1251 (Ind. Ct. App. 2002), *trans. denied* 774 N.E.2d 515 (Ind. 2002). A department of child services is not obliged to rule

out all possibilities of change; it need establish only a reasonable probability a parent's behavior will not change. *See In re Kay L.*, 867 N.E.2d 236, 242 (Ind. Ct. App. 2007).

Father first asserts the evidence was insufficient because he "was not the reason behind the original detention as he was not in the home at the time." (Appellant's Br. at 4.) We disagree. Father has responsibility for the circumstances resulting in the children's detention by DCS because, at the time of detention, he was incarcerated and thus unavailable to care for the children. We will not excuse his unavailability when he chose to engage in the behaviors that resulted in his incarceration.

Next, Father claims the evidence did not support termination because he was motivated to obtain custody of his children, he participated in counseling while he was incarcerated, and he cooperated with DCS the best he could in light of his parole restrictions. That may be true, but the record nevertheless contains evidence supporting the court's implicit finding that Father remained unable to care for his children.

Father has seizures that cause him to black out and wake up on the floor. Even with medication, his seizures can happen on a daily basis in hot weather. As the family case manager noted, if the children were left in Father's care alone, they would be unattended when Father has seizures.

S.M.W. and C.G.R.V. have numerous developmental problems that require treatment and services. Their foster parent has had extensive training to help her deal with their behavior. Father has not had any training and, because he does not have a driver's license, he would be unable to take the children to their required appointments.

The case manager testified:

> It's likely that [Father] would probably need years of therapy in order to effectively parent his children due to the fact -- due to his past history as a juvenile. With all he went through with the system and being in and out of residential placements. There's probably some issues there that need to be addressed before we could move on to even his sex offender treatment and then his parenting would have to be -- skills he would need to parent these children.

(Tr. at 128.)

In his 1997 pre-sentence investigation report, Father admitted he used cocaine, amphetamines, pills, LSD, heroin, and marijuana. At the termination hearing Father claimed he lied and he had used only marijuana. Father has not received any treatment for drug use. Neither was it clear whether Father had received any treatment for the abuse he endured as a child or adequate treatment for being a convicted sex offender.

Due to his felony conviction of child molesting, Father has difficulty finding stable employment and had begun working as a handy-man. Because he did not have regular work, Father had never paid the $63-per-week child support ordered during the CHINS proceedings. Father claimed he would be moving in with his step-mother, but at the time of the termination hearing he was living with a male friend in a two bedroom apartment that was inappropriate for children. Thus, at the time of termination, Father's financial and living situations were not conducive to his having custody of the children.

The evidence supports the finding the circumstances resulting in the children's removal had not been remedied.[3] Father has not challenged the court's findings regarding the remaining elements. Accordingly, we affirm the court's judgment terminating Father's parental rights to S.M.W. and C.G.R.V.

Affirmed.

FRIEDLANDER, J., and BRADFORD, J., concur.

[3] Father also alleges the evidence did not support the finding continuation of his relationship with the children posed a threat to their well-being. Because Ind. Code § 31-35-2-4(b)(2)(B) is written in the disjunctive, the juvenile court needed to find by clear and convincing evidence only one of the two alternative requirements of part (B). *See L.S.*, 717 N.E.2d at 209. Where, as here, the juvenile court found both, we may affirm if the evidence supports either. *See In re B.J.*, 879 N.E.2d 7, 22 n.4 (Ind. Ct. App. 2008), *trans. denied sub nom. Watkins/Johnson v. Marion County DCS*, 891 N.E.2d 42 (Ind. 2008).